

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHAN CHAUN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeals from the District Court of the
United States for the Northern District
of California, Southern Division.

FILED

FEB 29 1944

PAUL R. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

Mr. WALTER H. DUANE,
490 Mills Building,
San Francisco, California,
Attorney for Defendant and Appellant.

Mr. FRANK J. HENNESSY,
United States Attorney,
Northern District of California,

Mr. JAMES T. DAVIS,
Assistant United States Attorney,
Northern District of California,
Post Office Building,
San Francisco, California,
Attorneys for Plaintiff and Appellee.

In the Southern Division of the United States
District Court for the Northern District of
California

(No. 27868 G—INDICTMENT)

FIRST COUNT: Jones-Miller Act, Title 21 USC
174;

In the November 1942 term of said Division of
said District Court, the Grand Jurors thereof on
their oaths present: That Chan Chaun (whose full
and true name is other than hereinabove stated
to said Grand Jurors unknown, hereinafter called
“said defendant”), on or about the 1st day of
December, 1942, in the City and County of San
Francisco, State of California, within said Division
and District, fraudulently and knowingly did con-
ceal, and facilitate the concealment of a lot of
smoking opium, in quantity particularly described
as 12 5-tael tins containing approximately 80 ounces
of smoking opium, and the said smoking opium had
been imported into the United States of America
contrary to law as said defendant then and there
knew.

SECOND COUNT: Jones-Miller Act, Title 21 USC
174;

And the said Grand Jurors upon their oaths
aforesaid do further present:

That at the time and place mentioned in the first
count of this indictment, within said Division and
District, said defendant fraudulently and knowingly

did facilitate the transportation of said lot of smoking opium in quantity particularly described as 12 5-tael tins containing approximately 80 ounces of smoking opium, and the said smoking opium had been imported into the United States of America contrary to law as said defendant then and there knew. [*1]

THIRD COUNT: Jones-Miller Act, Title 21 USC 174;

And the said Grand Jurors, upon their oaths aforesaid do further present:

That on or about the 9th day of December, 1942, in the City and County of San Francisco, State of California, within said Division and District, said defendant fraudulently and knowingly did conceal and facilitate the concealment of a lot of smoking opium in quantity particularly described as 3 jars containing approximately one ounce and 184 grains of smoking opium, and the said smoking opium had been imported into the United States of America contrary to law as said defendant then and there knew.

FOURTH COUNT: Jones-Miller Act, Title 21 USC 174;

And the said Grand Jurors upon their oaths aforesaid do further present:

That at the time and place mentioned in the third count of this indictment, within said Division and

*Page numbering appearing at foot of page of original certified Transcript of Record.

District, said defendant did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of opium, to-wit, a lot of Yen Shee, in quantity particularly described as 220 grains of Yen Shee, and the said Yen Shee had been imported into the United States of America contrary to law as said defendant then and there knew.

FRANK J. HENNESSY

United States Attorney

Approved as to Form.

R. B. McM.

[Endorsed]: A true bill, Emil E. Engels, Foreman. Presented in open court and ordered filed Feb. 3, 1943. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [2]

[Title of District Court.]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 26th day of February, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause—No. 27868.]

DEFENDANT'S PLEA OF NOT GUILTY TO
THIRD AND FOURTH COUNTS OF IN-
DICTMENT

This case came on regularly this day for entry of the plea of the defendant Chan Chaun. The defendant was present with his Attorney Walter H. Duane, Esq. Joseph Karesh, Esq., Assistant United States Attorney, was present for and on behalf of the United States.

The defendant was called to plead and thereupon the defendant waived the reading of the Indictment and entered a plea of "Not Guilty" to the Third and Fourth Counts of the Indictment, which said plea was ordered entered. After hearing the Attorneys, it is ordered that this case be continued to March 5, 1943, to be set for trial. [3]

[Title of District Court.]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday the 14th day of April, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause.]

ORDER CONSOLIDATING THIS CASE AND
CASE No. 8362, PENDING IN THE NORTH-
ERN DIVISION OF THIS COURT, FOR
TRIAL

This case came on this day to be set for trial. James T. Davis, Esq., Assistant United States Attorney, was present for and on behalf of the United States. The defendant, Chan Chaun, was present with Walter H. Duane, Esq., his Attorney.

Upon motion of Mr. Davis, and by consent of Mr. Duane, it is ordered that case No. 8362, United States of America, vs. Chan Chaun, pending in the Northern Division of this Court, be and the same is hereby consolidated with this case for trial.

After further hearing the Attorneys, it is ordered that this case and said consolidated case No. 8362 be and the same is hereby set for May 27, 1943, for trial. [4]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 27th day of May, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause—No. 27868-G.]

ORDER RESETTING TRIAL OF
CONSOLIDATED CASES

Upon motion of Walter H. Duane, Esq., Attorney for defendant, and by consent of James T. Davis, Esq., Assistant United States Attorney, it is ordered that this case and case No. 8362, United States of America vs. Chan Chaun, heretofore consolidated with this case for trial, be and the same are hereby reset for June 8, 1943, for trial, and that said cases follow the trial of case No. 22359, United States of America vs. 1.057 Acres of Land, Eden Township, et al. [5]

[Title of District Court and Cause.—No. 27868-G.]

VERDICT

We, the Jury, find Chan Chaun, the defendant at the bar, guilty on Third County, guilty on Fourth Count.

W. F. SISSON,
Foreman.

[Endorsed]: Filed August 5, 1943 at 4 o'clock and 25 minutes P. M. C. W. Calbreath, Clerk. By J. A. Schaertzer, Deputy Clerk. [6]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 5th day of August, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Louis E. Goodman, District Judge.

No. 27868-G (San Francisco)

UNITED STATES OF AMERICA,

vs.

CHAN CHAUN.

No. 8362 (Sacramento)

UNITED STATES OF AMERICA,

vs.

CHAN CHAUN.

ORDER DENYING MOTION FOR NEW TRIAL
AND MOTION IN ARREST OF JUDGMENT

The defendant, the attorneys, and the jury heretofore impaneled herein being present as heretofore, the further trial of the two (2) above entitled cases was thereupon resumed. C. T. Cass and Joseph A. Manning were recalled and further testified on behalf of the United States. Robert L. Park was sworn as a Chinese Interpreter. Pon Yin Jeung

was sworn and testified on behalf of the United States. Mr. Davis made a motion for a continuance of the trial of these cases on the ground that the United States desired to call an additional witness, and after hearing had, it is ordered that said motion be denied, without prejudice to the right to renew said motion. The United States rested. Mr. Duane made a motion for a directed verdict in favor of the defendant in each case, [7] which said motion was ordered denied. Pon Yin Leong and Pon Wai were recalled and testified on behalf of the defendant. Lee King and Chan Chaun were sworn and testified on behalf of the defendant. Mr. Duane introduced in evidence Defendant's Exhibit "A". Defendant rested. Mr. Davis renewed the motion for a continuance of the trial of the cases on the grounds heretofore stated, and after hearing had, it is ordered that said motion be and the same is hereby denied. Thereupon the evidence was closed. After argument by the Attorneys and the instructions of the Court to the jury, the jury at 3:50 o'clock P. M. retired to deliberate upon their verdicts. At 4:25 o'clock P. M., the jury returned into Court and being asked if they had agreed upon their verdicts, replied in the affirmative and returned the following verdicts, which were ordered recorded, viz: "The United States of America, vs. Chan Chaun, No. 8362, We, the Jury, find Chan Chaun, the defendant at the bar, Guilty. W. F. Sisson, Foreman", and "The United States of America, vs. Chan Chaun, No. 27868-G, We, the Jury, find Chan Chaun, the defendant at the bar, Guilty on

Third Count, Guilty on Fourth Count. W. F. Sisson, Foreman” Ordered that the jury be discharged from the further consideration of these cases and that all jurors in attendance this day be excused until notified to report. Mr. Duane made a motion for a new trial, which said motion was ordered denied. Mr. Duane made a motion in arrest of judgment, which said motion was ordered denied. Mr. Duane gave oral notice of appeal. After further hearing the attorneys, it is ordered that these two cases be continued to August 7, 1943, for judgment. Further ordered that the defendant be remanded into the custody of the United States Marshal and that a Mittimus issue herein. [8]

[Title of District Court and Cause—No. 27868-G.]

MOTION OF DEFENDANT IN
ARREST OF JUDGMENT

Comes Now Chan Chaun, defendant in the above entitled action, against whom a verdict of guilty was rendered on the 5th day of August, 1943, in the above entitled cause, and moves the Court to arrest the judgment against said defendant and hold for naught the verdict of guilty rendered against said defendant on each and every count of said indictment.

1. That the indictment and each and every count thereof in this cause, does not state facts sufficient to constitute a public offense under the laws of the United States;

2. That said indictment and each and every count thereof is uncertain, unintelligible and ambiguous and insufficient in law to apprise said defendant of the nature of the charge or charges against him;

3. That the evidence is not sufficient to support the verdict as to any of the counts of said indictment;

4. That the verdict on each and every count of said indictment is contrary to law.

Wherefore, because of which said errors in the record herein, no lawful judgment may be rendered by the Court, and said defendant prays that this motion be sustained and the judgment of conviction against defendant be arrested and held for naught, and that said defendant have all such other orders as may seem meet and just in the premises.

WALTER H. DUANE

Attorney for Defendant

[Endorsed]: Filed Aug. 7, 1943. [9]

[Title of District Court and Cause—No. 27868-G.]

MOTION FOR A NEW TRIAL

Now Comes the defendant Chan Chaun in the above entitled action, and moves this Honorable Court for an order vacating the verdict of the jury convicting said defendant, and granting said defendant a new trial on each and every count of the indictment herein, for the following and each of the following causes, materially affecting the constitutional rights of said defendant:

1. That the verdict is contrary to the evidence adduced at the trial herein;

2. That the verdict is not supported by the evidence in the cause;

3. That the evidence adduced at the trial is insufficient to justify said verdict;

4. That said verdict is contrary to law;

5. That the trial court erred in admitting evidence in the course of the trial which was incompetent, irrelevant and immaterial, which errors were duly and regularly excepted to by said defendant;

6. That the trial court erred in refusing to give certain instructions proposed by said defendant, and to which ruling of the court said defendant duly and regularly excepted;

7. That the trial court erred in refusing to direct a verdict of "not guilty" at the close of the evidence of the United States;

8. That the trial court erred in admitting evidence in the course of the trial where no proper foundation had been laid;

To all of which motions said defendant duly and regularly excepted. [10]

This motion is made upon the minutes of the Court and upon all records and proceedings in said action, and upon all the testimony and evidence introduced at the trial.

Dated: August, 1943.

WALTER H. DUANE

Attorney for Defendant

[Endorsed]: Filed Aug. 7, 1943. [11]

District Court of the United States, Northern
District of California, Southern Division

No. 27868-G Criminal Indictment in Four counts
for violation of U.S.C., Title 21 Sec. 174; Jones-
Miller Act.

UNITED STATES

v.

CHAN CHAUN

JUDGMENT AND COMMITMENT

On this 7th day of August, 1943, came the United States Attorney, and the defendant, Chan Chaun, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offenses charged in the 3rd & 4th Cts., of the Ind. in the above-entitled cause, to-wit: Viol. of Jones-Miller Act, Title 21 USC 174—Third Count—Jones-Miller Act, Title 21 USC 174—defendant on December 9, 1942, in San Francisco, California, did conceal and facilitate the concealment of a lot of smoking opium in quantity particularly described as 3 jars containing approximately one ounce and 184 grains of smoking opium, and the said smoking opium had been imported into the United States of America contrary to law as said defendant knew; Fourth Count—Jones-Miller Act, Title 21 USC Sec. 174—defendant, on December 9, 1942, in San Francisco, California, did conceal and facilitate the concealment of a certain

quantity of a derivative and preparation of opium, to-wit, a lot of Yen Shee, in quantity particularly described as 220 grains of Yen Shee, and the said Yen Shee had been imported into the United States of America contrary to law as said defendant knew; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court [12]

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of One (1) Year and One (1) Day and pay a fine to the United States of America in the sum of One Hundred and No/100 (\$100.00) Dollars on the Third Count of the Ind. and for the period of One (1) Year and One (1) Day and pay a fine to the United States of America in the sum of One Hundred and No/100 (\$100.00) Dollars on the Fourth Count of the Ind.; and it is further ordered that the periods of imprisonment imposed on defendant on the 3rd & 4th Counts of the Ind. commence and run concurrently and commence and run concurrently with the period of imprisonment imposed on defendant in Case No. 8362 (Sacramento) United States of America vs. Chan Chaun; and that said defendant be further imprisoned until payment of said fines, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the First and Second Counts of the Ind. be and the same are hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

LOUIS E. GOODMAN

United States District Judge.

The Court recommends commitment to a U. S. Penitentiary.

Entered and Filed this 7th day of August, 1943.

C. W. CALBREATH

Clerk.

(By) J. A. SCHAERTZER

Deputy Clerk.

Examined by: James T. Davis, Asst. U. S. Atty.

Entered in Vol. 35 Judg. and Decrees at Pages 319-320. [13]

[Title of District Court and Cause—No. 27868-G.]

NOTICE OF APPEAL

Name and Address of Appellant: Chan Chaun,
717 Grant Avenue, San Francisco, California.

Name and Address of Appellant's Attorney: Walter H. Duane, Esq., 490 Mills Building, San Francisco, California.

Offense: Violation of Jones-Miller Act, Title 21 U.S.C.A. Section 174.

Third Count: That the defendant on or about the 9th day of December, 1942, in the City and County of San Francisco, State of California, within said Division and District, did fraudulently and knowingly conceal and facilitate the concealment of a lot of Smoking Opium in quantity particularly described as 3 jars containing approximately one ounce and 184 grains of Smoking Opium, and the said Smoking Opium had been imported into the United States of America, contrary to law, as said defendant then and there knew.

Fourth Count: That the defendant, on or about the 9th day of December, 1942, in the City and County of San Francisco, State of California, within said Division and District, did conceal and facilitate the concealment of a certain quantity of a derivative and preparation of Opium, to-wit, a lot of Yen Shee, in quantity particularly described as 220 grains of Yen Shee, and the said Yen Shee had been imported into the United States of America, contrary to law, as said defendant then and there knew.

Date of Judgment: August 7, 1943.

Description of Judgment and Sentence: "Guilty" upon Counts Three and Four of said Indictment, as above set forth; one (1) year and (1) day imprisonment upon the Third Count of said Indictment and One (1) year and One (1) Day [14] imprisonment upon the Fourth Count of said Indict-

ment and a fine of \$100.00 on the Fourth Count of said Indictment; the sentence of imprisonment upon the Third Count and the sentence of imprisonment upon the Fourth Count to run concurrently and the said sentences of imprisonment so running concurrently to run concurrently with the sentence of imprisonment imposed upon said defendant in the action numbered 8362, which said action was consolidated with the above entitled action for the purposes of trial.

Name of Prison Where Now Confined: County Jail of the City and County of San Francisco, under five (5) days stay of execution.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeal of the Ninth Circuit, from the judgment above mentioned, on the grounds set forth below:

Grounds of Appeal

1.

That the learned trial Judge committed errors in law arising during the course of the trial, and erred in the decision of questions of law arising during the course of the trial.

2.

That the evidence produced and received upon the trial of said cause was insufficient as a matter of law to justify the verdict of the jury.

3.

That the learned trial Judge erred in denying the motion made by counsel for defendant for a directed verdict of "Not Guilty" at the conclusion of the case of the prosecution, for the reason that taking said evidence in said [15] case is not sufficient as a matter of law to support a verdict of "Guilty".

4.

That the trial court erred in not instructing the jury to return a verdict of "Not Guilty" in favor of appellant.

Dated: August 9, 1943.

CHAN CHAUN

Appellant

WALTER H. DUANE

Attorney for Appellant

[Endorsed]: Filed Aug. 10, 1943. [16]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 18th day of August, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Louis E. Goodman, District Judge.

[Title of Cause—No. 27868-G.]

COURT'S INSTRUCTIONS RE
RECORD ON APPEAL

This case came on this day for hearing the instructions regarding the preparation of the record on appeal. Walter H. Duane, Esq., and James B. O'Connor, Esq., were present as attorneys for the defendant. Thomas C. Lynch, Esq., Assistant United States Attorney, was present for and on behalf of the United States. After hearing Mr. O'Connor and Mr. Lynch, it is ordered that the defendant lodge and file the proposed bill of exceptions and assignment of errors within thirty (30) days, that the United States lodge and file its proposed amendments and objections to said proposed bill of exceptions within fifteen (15) days, and that the bill of exceptions be settled and filed within fifteen (15) days thereafter. [17]

At a Stated Term, to wit: The October Term 1943, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Friday the twenty-sixth day of November, in the year of our Lord one thousand nine hundred and forty-three.
Present:

Honorable Curtis D. Wilbur, Senior Circuit
Judge, Presiding,

Honorable Francis A. Garrecht, Circuit Judge,
Honorable Clifton Mathews, Circuit Judge,

No. 27868—No. 10525

CHAN CHAUN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO SETTLE
AND FILE BILL OF EXCEPTIONS

Upon consideration of the application of Mr. James B. O'Connor, counsel for appellant, and of the stipulation of Mr. Frank J. Hennessy, United States Attorney, counsel for appellee, and good cause therefor appearing,

It Is Ordered that the time within which the bill of exceptions of appellant herein may be settled and filed be, and hereby is extended to and including the 10th day of December, 1943.

[Endorsed]: Filed Nov. 26, 1943. [18]

[Title of District Court and Cause—No. 27868-G—
8362 (Sac.).]

BILL OF EXCEPTIONS OF DEFENDANT
CHAN CHAUN

Be it remembered that heretofore and during the November 1942 term of said Southern Division of

the United States District Court in and for the Northern District of California, the Grand Jury of said Division and District did present and return in and before the above entitled Court its indictment against the above named defendant; that thereafter said indictment was filed in said Court and thereupon said defendant was duly arraigned, as shown by the record on file in the above entitled Court; and

Be it further remembered that heretofore and during the October 1942 term of the Northern Division of the United States District Court in and for the Northern District of California the Grand Jury of said Division and District did present and return in and before the Court of said Division and District its indictment against the above named defendant; that said indictment was filed in said Court and thereafter said defendant was duly arraigned, as shown by the record on [20] file in the above entitled Court;

That heretofore and on April 14, 1943 indictment No. 8362 (Sac.) returned in the Northern Division of the Northern District of said Court was ordered consolidated with indictment No. 27868-G returned in the Southern Division of the Northern District of said Court for trial; and

Be it further remembered that prior to trial said defendant entered a plea of not guilty to each of said indictments and on August 4, 1943 the above entitled actions proceeded to trial before the Honorable Louis E. Goodman, United States District

Judge, before a jury, the United States being represented by the Honorable Frank J. Hennessy, United States Attorney in and for the Northern District of California, and James T. Davis, Esq., Assistant United States Attorney, and the defendant being represented by Walter H. Duane, Esq.; said causes having been called for trial the Court directed the filling of the jury box with proposed jurors. Thereafter the Court stated the nature of the case and questioned the jurors as to their qualifications, at the conclusion of which the jury was impaneled to try the above entitled causes.

Thereupon the United States, to maintain the issues on its part to be maintained, called as its first witness R. F. Love.

TESTIMONY OF R. F. LOVE FOR THE UNITED STATES

R. F. Love, produced as a witness on behalf of the [21] United States, having been first duly sworn, testified substantially as follows:

My name is R. F. Love and I am by occupation a chemist employed by the United States Bureau of Internal Revenue and have been so employed for the last twenty-five years. (The qualifications of the witness as an expert were here stipulated to.)

I have examined the contents of these jars that you show me. Four of the jars which you show me contain smoking opium. I examined these particu-

(Testimony of R. F. Love.)

lar jars and put my initials upon them. There are two jars together being one exhibit and there is contained in these two jars approximately one ounce and 174 grains of smoking opium. These jars were delivered to me by Agent Cass.

Whereupon two jars identified by the witness were marked "U. S. Exhibit 1 For Identification".

The jars that have just been marked U. E. Exhibit No. 1 For Identification contained one ounce, 174 grains of smoking opium. They have been continually in my custody from the day I received them from Agent Cass until I produced them in Court today.

Thereupon a jar was offered for identification and marked "U. S. Exhibit 2 for Identification".

The Government's Exhibit 2 For Identification, which you show me contains ten grains of smoking opium. I received this jar from Agent Cass and it has been in my possession since then [22] until now.

Thereupon a jar was offered and received as "U. S. Exhibit 3 For Identification".

U. S. Exhibit 3 For Identification, which you show me, has been examined by me and contains 121 grains of Yen Shee.

Thereupon a package was marked "U. S. Exhibit 4 For Identification".

U. S. Exhibit 4 For Identification, which you show me, has been examined by me. It contains 66 grains of yen shee. I received this package from

(Testimony of R. F. Love.)

Agent Cass and it has been in my custody since that time.

Thereupon a package was offered and received as "U. S. Exhibit 5 For Identification".

The package U. S. Exhibit 5 For Identification, which you show me, has been examined by me and it contains 33 grains of yen shee. This package was received by me from Agent Cass and has been in my custody since then until today.

Thereupon 12 brass tins contained in a cardboard carton were offered and received as "U. S. Exhibit 6 For Identification".

U. S. Exhibit 6 For Identification, which you show me, has been examined by me. This exhibit contains smoking opium in the quantity of approximately 5 taels. A tael is about $6\frac{2}{3}$ ounces. I examined the contents of the Government's Exhibit 6 For Identification and found they contained smoking opium. Each of said tins contain smoking opium. Yen shee is the ash which is left after opium has been smoked. The 12 tins [23] which form U. S. Exhibit 6 For Identification were received by me from Agent Cass and have been in my possession since then until today.

Cross Examination

I received Government's Exhibits 1 and 2 For Identification on or about December 4, 1942.

TESTIMONY OF DWYER H. SKEMP FOR THE
UNITED STATES

Dwyer H. Skemp, produced as a witness on behalf of the United States, being first duly sworn, testified substantially as follows:

My name is Dwyer H. Skemp and I am by occupation an agriculture inspector with the State Department of Agriculture and was so engaged in said occupation on December 1st of last year and have been so engaged in that occupation since 1930. As such Inspector it is part of my duties to inspect the cars, baggage, luggage, trunks and their manifests entering the State of California in the enforcement of the California Agriculture Laws in conjunction with various other agencies.

On the first day of December of last year I had occasion to inspect the baggage on a Pacific Greyhound bus coming through from Portland. I was working on the night shift and I was inspecting all baggage that came in on that night from midnight until 8:00 A. M. The black suitcase which you show me I saw in the baggage section of the stage, in the early morning of December 1st when I was checking the suitcases that came in on [24] that bus. The bus was a Greyhound stage, the driver of which was a Mr. Cross. When I inspected this black suitcase the bag contained, besides an Oregon paper and a Chinese paper, some olive drab tins wrapped in a newspaper, and they had an emblem on them. I believe it was a K and there was some lettering on the side. As I recall there were 12 tins in the bag.

(Testimony of Dwyer H. Skemp.)

The 12 tins which you show me appear to be identical with the tins I saw in the suitcase which was taken from the stage. The baggage check attached to the bag which you show me was examined by me at Hornbrook. I recognize the number on the baggage check. I made a notation of it at the time. The number is 9-37-21. I recall that number of my own knowledge. Whereupon a black suitcase and its contents and a baggage check attached thereto were offered and received as "U. S. Exhibit 7 For Identification".

Cross Examination

I identify the bag and baggage check and its contents by the Life magazine and the newspaper therein and the paper with the Chinese writing that is in it. I identify the bag as the make of bag, and baggage check on it, and all of the contents. I identify them as identical with the items in the suitcase I inspected. The Life magazine which you show me, dated October 5th, is the same magazine which was in the suitcase and I identify it by the picture on the front of it. I could not say definitely, but I believe I have seen other [25] copies of Life dated October 5, 1942. I do not know whether I saw any other copy of Life of October 5, 1942 with the same picture on the cover. I only recognize the magazine. [26] All I know is that a magazine similar to the one shown me now was in the suitcase that I inspected at Hornbrook. There is no question whatever in my mind but that the Oregon Journal dated

(Testimony of Dwyer H. Skemp.)

November 8, 1942 is the same newspaper that I saw in the suitcase. I can tell that it is the same newspaper by the appearance and setup on it. I know that there are thousands of copies of the Oregon Journal published, but I say that this newspaper is the one I saw in the suitcase. I can tell by the red flare and the setup. I doubt that you would find any copy of the Oregon Journal in many months that has this particular setup. I can tell this by the appearance and by the number of the check. The baggage check number was 3-47-21. I first said that the baggage check number was 9-37-21. The situation with regard to the grip is this: certain circumstances and appearances cause you to have a recollection in your mind and you might not have a particular detail in your mind unless you wrote it down but the grip and the sequence in packing is always a factor and to that extent the grip and the newspapers appear to be the same as they were at the time I made the inspection. I do not know whether someone else might have put another newspaper in the suitcase, I did not go into it on a close enough inspection. There were probably 38 or 40 passengers to see to and I did not pay that much attention.

TESTIMONY OF C. T. CASS FOR THE UNITED STATES

C. T. Cass, produced as a witness on behalf of the [27] United States, having been first duly sworn, testified substantially as follows:

My name is C. T. Cass. I am an agent of the Federal Bureau of Narcotics and have been such an agent for the past 17 years. The bag which you show me I saw about 2:30 in the afternoon of December 1st at Davis Junction in Yolo County, California. This bag was turned over to me by the driver of bus No. 401 of the Pacific Greyhound. When the bus appeared the driver stepped out of it and said to me, "I guess this is what you are looking for", and he opened the baggage compartment and took out this bag with baggage check 9-37-21 on it. We opened it and removed from it 12 brass, 5 tael tins, having a stamp K on them. The tag that you show me was attached on the 12 brass, five-tael tins by me at the time I examined them at Davis and put them in the vault. The tag was put on in my presence and reads, "Cal. 3192, Chan Chaun & Pon Yin Jun, Exhibit B, 1 black Gladstone bag seized 12-1-42, E. P. Burton and C. T. Cass". I opened and examined the bag at Davis Junction. On an examination of the bag now I state that these are the same newspapers that were in there at the time I examined it at Davis. The only ones that were taken out were some we took out with the 12 cans which were taken out of the suitcase. At the time I examined the suitcase it contained a copy of Life, a

(Testimony of C. T. Cass.)

copy of Look, some Oregon papers and Chinese newspapers. At that time there was also in the bag 12 brass, five-tael cans, containing a black substance. Government's Exhibit 6, which [28] you show me, are the cans we took out of the suitcase and turned over to the chemist. They were wrapped in newspapers. These blue marks on the cans were marks that were placed there by me when we took them to the chemist. When I brought the cans from Davis they were not in the suitcase. The cans were removed from the suitcase at Davis and the suitcase was left on the bus with the baggage and came through in the regular way to San Francisco, while we followed the bus in. The tag which you show me contains my initials and the date 12-4-42. Government's Exhibit 6 For Identification was turned over by me to the chemist. Government's Exhibit 7 For Identification, the red-colored baggage check, was attached to the bag at the time I examined it and at the time I put it in the safe.

After we arrived at the Greyhound Bus Depot around 7:50 on Friday evening we watched the Greyhound Depot for approximately a week. We had taken the opium out and had put the bag back with the check on it on the bus and then followed the bus into San Francisco. The bag was taken off the bus at 7:50 that evening at the Greyhound Bus Depot at Fifth and Mission Streets. A baggage-man put it in the baggage room. The baggage however was there and I walked with him when he went in

(Testimony of C. T. Cass.)

and put it in the baggage room. We watched the bag for approximately five or six days. I watched it part of the time in conjunction with Agent Burton.

On the morning of December 9th when I came down to the office Agent McGuire had the truck driver named Timothy [29] Leong sitting in a room at the office. I later got on the truck with Mr. Leong and the suitcase and about 25 or 50 feet away from [30] 717 Grant Avenue I got off the truck and stood in front of the place. Mr. Leong got off the truck and took the suitcase and walked into the place, placing the suitcase on the floor and walked out. The first time I saw the defendant was approximately half an hour, or thirty minutes later, on the fourth floor of 717 Grant Avenue. At the time I saw the defendant, Mr. Pon Wai the Assistant Manager of 717 Grant Avenue was present. At a conversation between the defendant, Mr. Pon Wai and myself, Mr. Pon Wei made the statement, pointing to the defendant Chan Chaun: "that is the man that gave me check 9-37-21".

Whereupon the Witness Cass was temporarily withdrawn from the witness stand and his cross examination reserved by Mr. Duane until his testimony was completed.

TESTIMONY OF TIMOTHY LEONG FOR THE
UNITED STATES

Timothy Leong, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Timothy Leong. I am by occupation a teamster, employed by the Canton Express.

Thereupon a baggage check marked "U. S. Exhibit 8 For Identification", the baggage check that you show me, I believe is the same check that I used to pick up the suitcase on the Ninth of December of last year. I picked up a suitcase from the Pacific Greyhound bus depot. At that time I presented a claim check and a black suitcase, which I only saw once, was [31] given me. I do not know whether it is similar to the bag you show me or not. I saw it only the one time when I made a delivery from the Federal office. I did not pick it up from the Greyhound depot. I picked it up in the Federal Building from the narcotic agents, who released it to me. I went to the Greyhound station but they did not release any bag or suitcase to me. I presented a check there. I would not know whether the check you show me was the one that was presented. When I presented this check at the Pacific Greyhound depot they made it look as though they were looking for something. They went away and then they came back and said they could not find it and later on two agents came in and called me behind the counter, searched me and asked me what was in the bag. I did not know. All I knew was that I got the check, that I had picked it up and

(Testimony of Timothy Leong.)

took it to a certain place. Then they proceeded to take me to the Federal Building and up there they questioned me again and then decided to give me the suitcase and to make the delivery. That is the first time I saw the suitcase. One of the agents got on the truck with me but got off about 30 feet from the store and I made the delivery and came out of the store. The baggage check that I presented to the Pacific Greyhound bus people was one that I had received from my boss. The check which you show me marked "Canton Express Company" is the check that I received. It was tied with wire to this tag when I came back to the office. The note attached to it says: "H. W. T. & Co." That means Hing [32] Wah Tai & Company. Hing Wah Tai & Company was the place where I delivered the suitcase.

Thereupon the check marked "Canton Express Company" was offered and received as "U. S. Exhibit 9 For Identification".

After I had gone to the Federal Office Building they decided to give me the suitcase to make the delivery. I delivered it to the Hing Wah Tai & Company at 717 Grant Avenue. I did not deliver it to anyone personally. I just said it was the suitcase and laid it on the floor.

Cross Examination

When I took the suitcase to the Hing Wah Tai Company there were several parties there. I just walked in and said, "There is a suitcase for you", and walked out. I have on prior occasions deliv-

(Testimony of Timothy Leong.)

ered merchandise to the ground floor of the establishment where I delivered this suitcase. It is a large floor and there is merchandise there. The writing on Government's Exhibit No. 9 For Identification "H. W. Tai", which you show me, is in the handwriting of my boss. I did not get the suitcase at the Pacific Greyhound bus depot. I testified before the United States Commissioner in this building on the 13th day of January of this year. I have examined the copy of the testimony as taken before the United States Commissioner which you have shown me. I so testified as set forth in that transcript as follows:

"Mr. Duane: Timothy Leong, called for the United States; sworn.

"Mr. Davis: Q. Mr. Leong, you are a driver [33] for the Canton Express Company, is that right? A. Yes.

"Q. Did you have occasion on or about December 9 to call for a certain grip at the Greyhound bus depot? A. Yes.

"Q. Did you have a check to present to the agent up there to pick up a grip?

"A. Yes.

"Q. Where did you get that check?

"A. I got it from the office of the Canton Express. The note was to pick that up.

"Mr. Davis: That is all."

When I went over to the Greyhound bus depot and presented the check, there appeared to be some

(Testimony of Timothy Leong.)

effort to find the suitcase, but it was not given to me there. The Federal narcotic agents came there and took me over to the Federal Building. First they searched me behind the counter at the bus depot and then took me to their office in the Federal Building. They later gave me the suitcase in their office. I did not open it at all and I do not know what was in it; they just handed it over to me and I picked it up right away and put it in the truck. All I know is that it was a black suitcase. I think there was a red tag on it but I do not recall the number on the tag.

TESTIMONY OF FRANK DUN FOR THE UNITED STATES

Frank W. Dun, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Frank W. Dun and I am the owner of the Canton Express Company. Timothy Leong, who testified here this morning, is an employee of the Canton Express Company. On the 9th day of December of last year I directed Mr. Leong to pick up a [34] piece of baggage at the Greyhound bus depot and the tag that you show me, marked Government's Exhibit 9 For Identification, is the tag that I gave to Mr. Leong and I wrote on there the words: "H. W. Tai". I know of my own knowledge that the address 717 Grant Avenue is the address of the Hing Wah Tai Company. At the time

(Testimony of Frank W. Dun.)

I instructed Mr. Leong to pick up the baggage I gave him the baggage check. I do not remember the number of the check, but I did give him a check. It was a Greyhound bus check. I do not remember the color but I do know it was a Greyhound tag. I received the tag which I gave to Mr. Leong from Pon Wai, who is one of the partners of Hing Wah Tai. I gave this check to Leong on the afternoon of the 8th, with instructions to go down and bring the baggage back to the store.

TESTIMONY OF PON WAI FOR THE UNITED STATES

Pon Wai, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Pon Wai and I am shipper and receiver for the Hing Wah Tai Company. I am employed by Mr. Chaun. That company is in the importing and exporting business. On the 9th day of December of last year I delivered to Mr. Frank Dun, the manager of the Canton Express Company, a Greyhound check. I gave him the check to pick up the baggage. The check that I gave him was a red check. I do not know its number. I directed Mr. Dun to pick up the piece of baggage and bring it to the Hing Wah Tai [35] Company. The baggage that was brought to the Hing Wai Tai Company was a black suitcase.

(Testimony of Pon Wai.)

The baggage check that I have referred to was on my desk and Mr. Chaun said: "Take it down to the express company and pick up that baggage". When I say Mr. Chaun, I mean the defendant here.

Cross Examination

I am one of the owners of the Hing Wah Tai Company. I am not exactly an employee. There are six or seven owners in the company and Chan Chaun is one of the owners. Besides the owners there are one or two other employees. I remember testifying before the United States Commissioner on the 13th of January of this year. I remember testifying before the Commissioner as you indicate in the transcript of that testimony as follows:

"Q. Do you know how it got on the desk? Did Chan Chaun put it on the desk or did somebody else put it on the desk?

A. I don't know who put it on the desk.

Q. You did not see Chan Chaun put it on the desk, did you? A. No."

Redirect Examination

It was Chan Chaun who told me to take the check and pick up the baggage but I do not know whether Chan Chaun put it on my desk. He did instruct me to go down and pick it up.

Recross Examination

At the time that Chan Chaun told me to have the baggage picked up there were some strangers standing right there. [36] I don't know who they were.

TESTIMONY OF LEONARD G. TITUS
FOR THE UNITED STATES

Leonard G. Titus, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Leonard G. Titus and I am an employee of the Pacific Greyhound bus line in charge of the baggage department and was so employed on December 9th of last year. On that date I saw Mr. Leong in the baggage department of the Greyhound Bus Company and he, at that time, presented the claim check for a piece of baggage. According to my records, Government's Exhibit No. 8 For Identification, which you show me, is the check which was presented to me. I made a notation in the record book that is kept at the office. I cannot say definitely whether or not I have seen the black bag that you now show me. The check which you show me and which is attached to the bag is a Greyhound bus check. I have been in charge of the baggage department since November 1, 1941. It is our practice to give a package to whatever passenger holds the matching check. By that I mean, when the baggage is checked originally a check is attached to the baggage and whoever presents the other half of that check is given the baggage. Each of these checks contains an identical number. The check that you show me and the check on the bag indicate that the bag was checked at Portland on November 20, 1942 at the Union Terminal. [37]

(Testimony of Leonard G. Titus.)

Cross Examination

When baggage is checked it is taken to the baggage room, at which time the person receiving it takes the ticket, breaks it in half and gives one-half to the passenger and attaches the other half to the baggage. The numbers on each piece correspond. The baggage then goes through to its destination and is put in the baggage room until it is called for by the passenger. In the ordinary course of business I do not pay any attention to the description of the baggage. I look for the identifying ticket.

You cannot check baggage on the Pacific Greyhound line without being a passenger. You must present a ticket of the Greyhound line at the time of checking the baggage. A person could actually present a passenger ticket and check baggage without actually being on the bus, but he would have to have a passenger ticket in order to have his baggage checked.

TESTIMONY OF THOMAS C. McGUIRE FOR THE UNITED STATES

Thomas C. McGuire, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is Thomas C. McGuire and I am now and have been for the last fifteen years a Federal narcotic agent. On the 9th day of December of last year at about 9:30 in the morning, in company with

(Testimony of Thomas C. McGuire.)

District Supervisor Manning, I was in the Greyhound bus depot at Fifth and Mission Street. At that particular [38] place the claim check was recovered from the Chinese delivery boy and he was taken to the Bureau of Narcotics office at the Empire Hotel and after questioning he was given a black bag. The Chinese delivery boy left in the company of another agent. He was followed by myself and another and a number of us went to the vicinity of 717 Grant Avenue in Chinatown. After arriving at that address the Chinese delivery boy was observed to enter and leave the black valise inside the premises, after which I and the other agents entered the premises. After my entry I remained downstairs, while my superior, Mr. Manning and Mr. Manion, the Inspector of the Police Department, and Mr. Cass went upstairs. While I remained downstairs I refused exit to a number of Chinese customers who were in the premises. There was quite a scene taking place outside the store and a number of occupants downstairs began to talk and finally Pon Wai came to me and asked if he could speak to my superior, or Inspector Manion, and I asked him what he wanted to speak about and after he told me I asked Inspector Manion to come downstairs and after talking to him for a few minutes we went up to the fourth floor, at least to the top floor of the building. There District Supervisor Manning and Inspector Manion, in my presence questioned Pon Wai, after which Pon Wai was

(Testimony of Thomas C. McGuire.)

taken before the defendant Chan Chaun. Chan Chaun was being questioned in a small cubbyhole that is on the top floor of the building. I remained outside the cubbyhole, although I could hear them talking. I heard Major Manning question Pon Wai in Chan Chaun's [39] presence relative to receiving the express tag from the defendant Chan Chaun and Pon Wai stated that he had received the express tag from Chan Chaun.

After receiving instructions from the District Supervisor, I remained with Pon Wai outside, some twenty or twenty-five feet from the defendant Chan Chaun and while there I observed the elevator working. I could see it was in motion on the lower floor. I left Pon Wai standing there and walked in the direction of the elevator and observed a partition or a homemade shelf arrangement that was near the elevator and on this shelf I observed three white porcelain jars; a type of jar that I know contain opium in the underworld channels in San Francisco. These three jars were freshly washed and were in clear view from where I was standing near the elevator. After lifting them and examining them, I observed another jar on the lower shelf in plain view that contained traces of what appeared to be opium on the outside of the jar. This jar was on a shelf below where the three washed jars were. I picked the jars up and took them to my superior, Major Manning. I received further instructions, after which I continued search-

(Testimony of Thomas C. McGuire.)

ing and found implements used for pipe smoking yen shee in close proximity to where the three freshly washing jars were found. The jars marked Government's Exhibit No. 1 For Identification, which you show me, are the jars that were on the second shelf. The washed jars did not of course contain any opium. My initials are on each of these jars. My initials were put on at [40] the time of finding the jars or immediately after. Government's Exhibit No. 2 For Identification, which you show me, are jars which I believe were found by Police Inspector Connolly, while we were searching, and I saw this one found in close proximity to where I found the other jars. My initials are also on these. Government's Exhibit No. 5, which you show me, contains a substance which I found on that occasion and my initials are on this package. They were placed there when the evidence was accumulated together by Mr. Cass; we all placed our initials on them. Government's Exhibit No. 4 For Identification, which you show me, is a package that contains a substance known as yen shee. My initials are on the package. We also found a number of opium pipes. The two packages contain yen shee. That is the residue of opium that has been smoked. The jars contain actual opium that has not been smoked. They were all found in the general proximity of where the original packages were. They were concealed in different places. The opium pipes for instance were in one box. The jars are in the same

(Testimony of Thomas C. McGuire.)

condition as when found on the shelves. The substance contained in these two packages that you show me were in these packages when I found them. They were later placed inside of a paper of our own; that is they were wrapped in brown paper. I did not find them; they were found by the Police Inspector, but I saw him find them.

An elderly man known as the cook, Pon Jeung, who is now sitting in the court-room, came in wearing a cook's apron [41] and he said he was a cook. He was at the scene at the time and I questioned him as to whether he had washed the jars out and he said he had. After questioning the cook with the opium we took him into the presence of the defendant Chaun, Major Manning, Inspector Manion, Mr. Cass and myself. Major Manning and Inspector Manion did the questioning and in the presence of the defendant, Chan Chaun, the cook said that he knew the opium was there but it was not his; that it was opium that belonged to Chan Chaun. The pipes likewise that were there were also shown to the defendant Chan Chaun at the same time the opium was.

“Mr. Duane: Now, if your Honor please, we object to anything of this kind being brought here; we are not charged with anything of this kind in the indictment in this case, and we object to it on the ground it is immaterial, irrelevant, and incompetent, and not within the issues of this case.

(Testimony of Thomas C. McGuire.)

“Mr. Davis: If your Honor please, we are entitled to put it in to show surrounding circumstances; we have established opium there, we have established yen shee, and we are entitled to show as incidental to that that it was being smoked in the premises.

“Mr. Duane: We are not charged with smoking, we are not charged with possession of implements of that kind. The indictment speaks for itself. We are charged with opium and yen shee. I will submit to your Honor’s ruling on that.

“The Court: Of course, it might be a circumstance taken in connection with the presence of the opium; it might [42] be taken into account by the jury, if there is any question in their mind as to whether the opium was temporarily there. I will overrule the objection.

“Mr. Duane: Exception.”

Whereupon two opium pipes, two bowls and scales were marked “U. S. Exhibit 10 For Identification”.

These articles which constitute Exhibit 10 For Identification are used in conjunction with smoking opium, the bowls are put in the stems, the opium is cooked or smoked through the upper bowl, that is, it is not altogether cooked, it is cooked on the bowl and it in turn is inhaled through this part which I indicate. The exhibits which you show me are commonly known as opium pipe stems and the bowls are there. This (indicating) is a Chinese pair

(Testimony of Thomas C. McGuire.)

of scales used to weigh the opium before cooking. The bowls are used in conjunction with the smoking of the opium. The articles constituting Government's Exhibit No. 10 For Identification, which you show me, are the pipes and scales found in the premises in question; my initials were placed there by me at the time they were found. I was present when they were found.

Cross Examination

The articles which constitute Government's Exhibit 10 For Identification, before they could be used for smoking opium would require the use of a vapor oil lamp. This lamp is used for heating the opium.

My attention was first directed to this portion of the [43] premises by reason of the elevator in motion. I do not know whether the elevator car was in operation. I saw the shaft and cable. The elevator shaft was close to the premises that were partitioned off and where the shelves were. In addition to the shelves and what I found there, there were cooking utensils and dishes and a stove. On the other side of the partition there was a sink there with water; the room was equipped for cooking. At the time I saw the cook there he had an apron on and at that time I questioned him. He said that the opium belonged to the boss. I then turned the cook over to Inspector Manion and District Supervisor Major Manning. At that time the cook was taken into custody and he and Chan Chaun

(Testimony of Thomas C. McGuire.)

were both charged. I did not have any difficulty understanding the cook, Pon Yin Jeung; he seemed to understand us and he answered, not in good English, but he understood.

TESTIMONY OF JOHN CONNOLLY FOR THE UNITED STATES

John Connolly, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is John Connolly and I am a police officer connected with the San Francisco Police Department. On the 9th of December of last year I had occasion to be present at the premises of Hing Wah Tai Company at 717 Grant Avenue. I accompanied Inspector Manion and Federal agents to those premises and I was instructed by Inspector Manion to go to the top floor, [44] which I did. I then started a search for narcotics. I went to the kitchen in the rear on the top floor and Agent McGuire searched the kitchen and found the stuff which he has testified to, the jars and opium, some secreted in a teapot and some on shelves. We also found two opium pipes and bowls, Government's Exhibit No. 1 For Identification, which you show me, are the two jars that were found on that occasion. I placed my initials on them at that time. Government's Exhibits 2 and 3 For Identification, which

(Testimony of John Connolly.)

you show me are also the same jars which we discovered on that occasion; I also put my initials on them. Government's Exhibits 4 and 5 For Identification, the packages which you now show me, were discovered on that occasion. They were found in the teapot. The opium pipes and scales and bowls which you show me were discovered there on that day.

Cross Examination

I have been a member of the San Francisco Chinatown Squad for several years and am familiar with the premises at 717 Grant Avenue. There is conducted a general importing and exporting establishment. As I understand it, it was a corporation consisting of about five or six partners and at different times probably two or three employees. I had been to these premises prior to the occasion in question, it was then a gambling house. I have been there since these people have used it as an importing and exporting establishment with Inspector Manion. The cook lives there and Pon Jeung and Chan Chaun lives there. I do not know of any others living there. The [45] Chinese live in different places there. While I was on the fourth floor on the occasion in question the only person that I observed going up or down stairs, with the exception of the agents and the police officers, was Pon Wai. I do not know whether all of the people in that establishment eat their meals there. He told me that he was the cook there and I have known him in the place.

TESTIMONY OF JOHN J. MANION FOR THE
UNITED STATES

John J. Manion, produced as a witness on behalf of the United States, having been first duly sworn, testified substantially as follows:

My name is John J. Manion and I am a police Inspector in the San Francisco Police Department in charge of the Chinatown Squad. I have been a member of the Police Department for thirty-six years and in charge of the Chinatown Squad for the past twenty-two years.

On the 9th of December of last year I went to the premises known as the Hing Wah Tai Company at 717 Grant Avenue. Supervising Agent Manning and myself went to the top floor of the building at 717 Grant Avenue. At that time I saw the defendant there and had a conversation with him. This conversation was in the presence with at least Major Manning, myself and Chan Chaun. He was advised by Major Manning, after he came into the small room that he occupied, that he was under arrest. This room was really on the third floor. There is a half floor [46] which makes it four floors. In other words, there is one floor just above the street, it is really a half floor or mezzanine floor. What you have been calling here a fourth floor is really a third floor. The floor consists of a large open loft and in the loft is a small room occupied by the defendant. The kitchen is also in the rear of this third floor. The elevator entrance is on the left-hand side. The room that the defendant occupied would be on

(Testimony of John J. Manion.)

the south side of the building and on the east end of the building. The room contained clothes, a bed, and a small table with considerable Chinese reading material and books on it. There were several conversations with the defendant on that day. At the first conversation there was present Major Manning, Officer Cass, myself and Officer Connolly was outside of the room door. In that first conversation we brought Pon Wei up to the defendant. I have been on the premises before and I knew the people there. I knew that Pon Wei was a partner in the establishment and that the defendant Chan Chaun was a partner in the establishment and that the defendant Chan Chaun was also supposed to be the manager. When Pon Wei was brought in he was questioned about a tag for baggage and asked where he got it. He said he got it from the defendant Chan Chaun and that Chan Chaun had given it to him to give to the express man. Chan Chaun at that time said he had gotten the tag from a man by the name of Wong in the Bing Tong Building. I asked Chan Chaun where Wong lived and he said he did not know and that he could not tell me where Wong could be found. He said he had met him in the Bing [47] Tong Building and that was all he knew about him. There was a further conversation between Pon Jeung and Chan Chaun, Major Manning and myself. Pon Jeung's attention was called to the opium pipes and bowls that were found in the rear or in the kitchen part of the loft and he, Pon Jeung, said

(Testimony of John J. Manion.)

they belonged to Chan Chaun, that they were Chan Chaun's property and not his. Chan Chaun did not affirm or deny this statement.

Later an interpreter, a Miss Fong, was brought in and there was a further conversation in Chinese. In the first conversation had with the defendant no interpreter was present. The defendant then was questioned in English and replied in English. From our experience in Chinese cases we have found it always well to bring in an interpreter, because later the Chinese come into court and say they do not understand English.

All of the first conversation had with the defendant was in English. As I recall it, we also asked him if he had been out of town and he said he had been in Vancouver, Seattle and Portland. He said that he stayed at the Portland Hotel in Portland on the day of the 29th of November. In all of the testimony that I have given here concerning the conversations with the defendant, these conversations were in English and were made prior to the interpreter being there.

Cross Examination

The premises in question are a three story building, the second story of which is a sort of mezzanine and there are [48] two floors above this; the floor would be about 25 feet front and about 50 feet in depth, the frontage being on Grant Avenue. The room occupied by the defendant is at the front of the building on the Grant Avenue frontage and the

(Testimony of John J. Manion.)

kitchen is at the extreme rear. The room occupied by Chan Chaun is partitioned off at the front end of the building. I do not recall that there is a partition that separates the kitchen from the main floor. I think it is open with the exception of the elevator on the side of it. The elevator is probably 12 to 15 feet from the rear wall of the kitchen. It depends upon where you stand whether or not there is an obstruction between the kitchen and the vicinity of the elevator. If you were on the south side of the building your view might be obstructed to part of the kitchen. If you were on the north side you get a fair view of the kitchen. It is my impression that Chan Chaun was the manager there. There is a man there by the name of Harry Chan also. Up to a couple of years ago the defendant was the manager; since then I could not say. The first conversation I had in the presence of Major Manning, Pon Wei and Pon Jeung and the defendant occurred when Mr. McGuire wanted to see me and tell me he had some information. I believe that at that time Major Manning had the check. I do not recall whether that check was shown to Chan Chaun. I do not recall asking Chan Chaun where he got the check, but I do recall him saying that he got it from a man by the name of Wong in the Bing Tong Building on Waverly Place. He made that statement after he had been [49] confronted by Pon Wei. He told me he had met this man Wong the day before in the Bing Tong Building. I do not recall whether Pon Wei told me

(Testimony of John J. Manion.)

that there were some strange men in the place at the time he got the ticket. I do not recall that he told me he found the ticket on the desk. I recall that he said in the presence of Chan Chaun, "You gave me the ticket". I do not recall Chan Chaun saying, "No, someone else gave you the ticket". Chan Chaun said there were several men in the store at the time; one of the partners and some others were there. I do not recall whether or not Chan Chaun said, "No, I did not give you this ticket, another man gave it to you", and that Pon Wei said, "No, you gave it to me, there was another man there, but you gave me the check". That conversation might have taken place.

Redirect Examination

When the conversation took place between Pon Wei and Chan Chaun, this conversation was spoken in English, and there was no interpreter present.

TESTIMONY OF JOSEPH A. MANNING FOR THE UNITED STATES

Joseph A. Manning, produced as a witness on behalf of the United States, having been first duly sworn, testified as follows:

My name is Joseph A. Manning and I am the District Supervisor of the Bureau of Narcotics and I have acted in this capacity since 1921. On the 9th day of December of last year [50] I had occasion to go to the Hing Wah Tai Company and at that

(Testimony of Joseph A. Manning.)

time I had several conversations with the defendant. Inspector Manion was present during most of the conversation and Agents Cass and McGuire were present during part of the several conversations. During the first conversation, when Inspector Manion was present, there was a Chinese lady interpreter. At that time a Chinese by the name of Pon Wei was brought to the room occupied by Chan Chaun and Pon Wei said in the presence of the defendant, in response to questions put concerning where he had obtained the baggage check, that had been delivered in the building, that he had gotten the baggage check from Chan Chaun. The defendant said, "No, you got the check from another man who was with me," and Pon Wei insisted that he got it from Chan Chaun. Pon Wei said that he received it from Chan Chaun. This conversation took place in English and there was no interpreter present. There was another conversation shortly after the first conversation and Inspector Manion and myself were present. I am not sure whether any of the other agents were there or not. I asked Chan Chaun where he had been during the last month. He told me he had been in Vancouver, Seattle and Portland. He said he was in Portland on November 29th and 30th; that he had stopped at the Portland Hotel. I asked him if he had come down by bus and he said no, that he had come down by train. This conversation was in English. Later an interpreter was brought in, but all of the conversations that I have testified concerning were in English.

(Testimony of Joseph A. Manning.)

Later the conversation was [51] gone over again through the interpreter. I conversed with Chan Chaun for almost an hour. During this time Pon Yin Jeung was brought into the room where Chan Chaun had been sleeping and Pon Jeung, the cook, said that the jar he had in his hand and the opium smoking paraphernalia belonged to Chan Chaun. Agent McGuire had brought this opium to my attention just before he brought the cook into my presence. Chan Chaun did not respond to this. He said nothing. This conversation was in English. The interpreter was not present at that time.

Cross Examination

The defendant told me he had been in Portland on November 29th and 30th. He did not say October 29th. He told me he had been in Seattle. He told me he had stopped at the Portland Hotel and then at a certain hotel in Seattle, the name of which I don't remember, but which name I have in my notes, and that he was in Vancouver and stopped at a hotel in Vancouver, which was verified. I found no record of his registering at the Portland Hotel. We looked for his stopping at the Portland Hotel for the last week in November. I did not do this myself and don't exactly know what the boys up in Portland did. This was done from the Portland office and I do not know how far they traced the thing up there.

Whereupon the Government offered in evidence Exhibits 1 to 10, which had previously been offered for identification. [52]

TESTIMONY OF C. T. CASS, A WITNESS
PREVIOUSLY SWORN, RECALLED FOR
THE UNITED STATES

I have examined all of these exhibits. The package containing the 12 tins, which you show me, I saw when they were taken out of the envelope. I took these exhibits into my possession and turned them over to Mr. Love, the chemist. I took exhibits 1, 2, 3, 4 and 5 into my possession at 717 Grant Avenue on December 9th. They were turned over to me by Agent McGuire and then turned over by me to the Government chemist, Mr. Love.

“Mr. Davis: If your Honor please, at this time the Government wishes to offer in evidence exhibits 1 to 12, inclusive, previously offered for the purpose of identification.

“Mr. Duane: To all of which we object on the ground that they are immaterial, irrelevant and incompetent.

“The Court: They will be admitted in evidence.

“Mr. Duane: We note an exception, if your Honor please.”

Cross Examination

Upon my receiving certain information I made a trip from San Francisco to Davis. We met the bus and talked to the driver, who opened the baggage compartment and brought the black suitcase out with tax No. 9-37-21. We opened the suitcase and found it contained 12 brass cans, which cans were re-

(Testimony of C. T. Cass.)

moved. We then took the cans in the Government automobile wrapped in newspaper. We waited until the bus was changed and when the other bus with the baggage started to San Francisco [53] we followed it. We made inquiry among the passengers concerning whether or not any of them had the corresponding ticket for the check on the suitcase. We questioned one man but found that he had gotten on at Woodland and had no connection with it. I should say there were in the neighborhood of 25 to 30 passengers, as far as I can recall. None of the passengers had boarded the bus at Hornbrook. I do not recall whether any of the passengers boarded the bus at Portland. The only investigation made was to ask various passengers whether or not they were the owners of the suitcase. I did not go to Portland in connection with this investigation. I know that an investigation was made at Portland to ascertain who the person was that checked the bag at the Greyhound bus depot there. That investigation was made by the Portland office. From the time that the suitcase was placed on the bus at Davis, after the removal of the cans, the suitcase contained no opium on the trip to San Francisco. Since the arrival of the bag at the Greyhound bus depot at San Francisco it has been in the custodian's safe in our office. I was present when the bag was delivered to 717 Grant Avenue. I rode up to that place on the truck of the Canton Express and when about 25 or 30 feet from the place I got off the truck while the driver went in with the suitcase.

(Testimony of C. T. Cass.)

I followed him thereafter as he walked in the door. When he brought the suitcase in the door he left it on the floor and walked out. It was left on the open or ground floor of this place of business. There was a railing along the side and some desks. It was like [54] a reception room. There may be some merchandise stacked up in the front part of the store. The suitcase was brought in and placed on the floor where anybody could see it. I would say that at that time there were several persons in the place. Lai Quong and Pon Wei were there. There were several others. I was present at one of the conversations in the presence of Inspector Manion, Major Manning, Pon Wei and the defendant. I was present when Pon Wei said, "I received the check from Chan Chaun", and Chan Chaun said, "No, you did not". Pon Wei was asked the question, "Where did you get that check from?", and he said, "I got it from Chan Chaun", pointing to the defendant, and Chan Chaun said, "No, you got it from somebody else", but he said, "No, I got it from you", and they argued back and forth and Chan Chaun finally said, "No, somebody else handed you the check there", and Pon Wei said, "No, you possibly might have taken it from him, or something like that, but you are the one that gave it to me". Pon Wei said, "No, there was another man there, but you gave me the check". As I recall, Chan Chaun said that a Wong man gave him the check. I remember the name Wong. I do not remember the first name.

TESTIMONY OF PON YIN JEUNG FOR THE
UNITED STATES

Robert L. Park was sworn as an interpreter and thereafter the testimony was given through the interpreter.

My name is Pon Yin Jeung and I work for the Hin Wah Tai Company located at 717 Dupont Street or Grant Avenue and have [55] worked there since the firm started four or five years ago. I have been in this country over 30 years. I do not speak English at all. I have been working among Chinese. I was in the Hing Wah Tai premises on December 9th of last year. I was there in the presence of Inspector Manion, Major Manning and Mr. Cass. I did not have a conversation with them in English. I don't speak a word of English. They did not ask me in English whether certain opium which they had found there belonged to me and I did not say, "No, it belonged to Mr. Chan Chaun". I don't know that. I don't think so. I asked them to ask Chan Chaun. I said this to them in Chinese.

JOSEPH A. MANNING, A WITNESS PREVIOUSLY
SWORN, RECALLED FOR THE
UNITED STATES

I have been a District Supervisor of Narcotics since 1924 and have been with the Bureau of Narcotics since 1921 and I have been concerned with many cases involving smoking opium. I am familiar because of my position with the price of opium.

(Testimony of Joseph A. Manning.)

I know what the price was on the 9th day of December, 1942. Each of the cans here contain $6\frac{2}{3}$ ounces of opium. There are 437 grains of opium to an ounce and in the Chinatown San Francisco market it sells for around \$1 a grain. Each of these cans would hold about 2800 grains. In wholesale lots by the can it probably would sell, at that time, for \$600 or \$700 a can. They break it down again from the cans into jars and sell them for about \$100 a jar wholesale. It is then broken down into what is known as bindles, which sell for about \$1 a grain. The wholesale cost of a five-tael tin of opium would be [56] approximately \$600. The jobber or middleman's price would be about \$1000 or \$1200 and if the five-tael tin were broken into bindles it would be worth about \$2800.

Cross Examination

There is no legitimate price for opium. I cannot state what the market value of opium was on any particular date but I base my opinion on the fact that we buy opium from time to time as evidence and pay for it with Government money and we know how much it costs. The price we pay would not be higher than the ordinary addict would pay.

Whereupon, at the conclusion of the evidence offered on behalf of the United States, counsel for the defendant moved the Court for a directed verdict of not guilty.

“Mr. Duane: Then if we consider the case of the Government closed, I desire to make a motion for a directed verdict, and I first want to direct your Honor’s attention to the indictment in this case. The second count of the indictment from the Northern Division charges that on or about the 1st of December, at Davis Junction, in the County of Yolo, within the Northern Division of the Northern District, the said defendant did unlawfully, knowingly, fraudulently and feloniously conceal and did facilitate the concealment of a certain derivative of preparation of opium. That is the charge, the concealment and the facilitating of concealment of opium, and, further, that it was done knowingly. Also, that the derivative of opium had been imported into the United States contrary to law, which the de- [57] fendant then and there well knew.

“There are two features of this case that the prosecution or the Government was required to establish to a moral certainty and beyond a reasonable doubt; one was the concealment or the facilitation of concealment on the part of this defendant knowingly; also evidence to the effect that the opium was imported into the United States contrary to law, and that the defendant knew it.

“I want to simply base my motion on the insufficiency of the evidence, I will say the utter lack of evidence; there is no evidence, they have been silent on the subject of concealment and of knowledge. In each instance, I will take the indictment covering the features of the case in this division, which is as

to opium contained on the premises at 717 Grant Avenue, there is not one word relative to concealment, but, to the contrary, Mr. McGuire testified it was in plain sight, so that it was not concealed. There is not any evidence directly connecting this defendant with any of the opium alleged to have been found at 717 Grant Avenue. To the contrary, the witness testified that this cook said that it belonged to Chan Chaun. The cook himself says that he did not say anything of the kind, and the cook was a witness produced by the Government. However, notwithstanding whether the narcotics or the opium belonged to the defendant, I repeat, your Honor, there was absolutely no evidence of any concealment in either instance, or any evidence of knowledge. [58]

“I think probably the leading case on that subject is *Kalos v. United States*, 9 Fed.(2) at 268, which says the burden is on the government to establish those two elements, first, the concealment by the defendant, and also the knowledge of concealing it and knowledge that it was imported into the United States contrary to law.

“Mr. Davis: If your Honor please, on the first question brought out by Mr. Duane, I do not believe that that could possibly be the law as to proof of guilty knowledge. Section 3 of the Jones-Miller Act provides that on and after July 1, 1913 all smoking opium or opium prepared for smoking found within the United States shall be presumed to have been imported after the 1st day of April,

1904, and the burden of proof shifts upon the affiant or the accused to rebut that presumption.

“The government does not have to prove guilty knowledge upon the part of any person found in the possession of narcotics, that they knew it was imported illegally. It is unlawful to import it, and by Section 3 of the Jones-Miller Act the presumption arises that the defendant owned it, and it is up to him to show how he could have gotten it legally, so I do not think that that should concern us.

“The second proposition, your Honor, that Mr. Duane raises as to the opium found in 717 Grant Avenue, that it was in the open and there was no concealment, I think that Mr. Duane is applying an erroneous construction to the word ‘concealed’ as used in the statute, because numerous cases under the statute [59] define concealed to mean possession, it does not mean that you have to look it up.

“Now, as to the other point, we have witnesses who testified as to the evidence found on 717 Grant Avenue, that the cook said that it belonged to Chan Chaun, and Chan Chaun did not deny it. We had the cook on the stand and he said he did not say that. Obviously, that is a question for the jury, between what the cook said then and now, or what the agents say he said. As far as I can see the only question here is whether or not the government has sufficiently connected up the defendant with the opium that was found, and I say that we have, because we have established the check with the bag that has the baggage check on it. As far as the con-

cealment is concerned the indictment alleges that the opium was concealed in Davis, not in San Francisco, because it was taken out, and if the defendant put the bag containing the opium beyond his control he was concealing it and facilitating the concealment of it, no matter where it went at all times, even if he was not there to have accepted it.

“On the other point, as I say, your Honor, the only question as far as I can see that your Honor would have to consider on a motion for directed verdict would be whether or not the Government’s evidence has sufficiently connected up the defendant. I say we have established the checking of the bag, the bag contained opium, and we have traced the checked bag to the defendant. That is on the first case. As to whether the jury [60] will believe that he had the check himself, or got it from somebody else, that is also a question for the jury, but we have established by the witnesses that he was the man that turned the check over for it to be delivered.

“As to the question, as to possession of opium at 717 Grant Avenue, we have the direct testimony of three witnesses who said they found it, and in his presence he was accused of having it, and he continued to deny it, but I do not see any merit in Mr. Duane’s contention on this issue of the word ‘concealment’ or on the presumption of guilty knowledge.

“Mr. Duane: If your Honor please, in answer to the first proposition, the enactment of that section which has to do with a presumption occurred in the

year 1913. The case that I cited to your Honor is a case from the Circuit Court of Appeals for the Eighth Circuit, which was decided in 1925, twelve years after the enactment of this section that Mr. Davis speaks of. The Court in that case passed upon the question and in the face of that section found or declared that the burden was upon the government to prove to a moral certainty and beyond a reasonable doubt the knowledge and the concealment and the knowledge that the opium was imported into the United States contrary to law.

“Now, on the question of the checking of the bag, I do not see where Mr. Davis gets the idea that the defendant was connected with it. There has been absolutely no evidence to establish that the defendant had anything to do with the check- [61] ing of the bag. As a matter of fact, I think Sergeant Manion or Inspector Manion, and I believe also Major Manning testified that in their conversation with the defendant he said he was in Portland on November 30th, and if you will take a look at the check on the bag it was checked on November 20, so it does not connect him up, at all.

“The Court: Is it your contention that there would have to be evidence that the defendant checked the bag?

“Mr. Duane: There must be some evidence somewhere to connect the defendant with the bag, whether he checked it or what he did with it.

“The Court: There is testimony it was traced and that would be some evidence from which the jury could draw a reasonable inference.

“Mr. Duane: The evidence of the possession of the bag, itself, I do not believe is a matter of sufficient value. Pon Wei had the check, the same as the prosecution or the government, here, says that the defendant had the check.

“The Court: As I recall the testimony, Pon Wei said that the defendant had told him to go and arrange to get the bag with the check.

“Mr. Duane: Further than that, Pon Wei testified here that the check was not given to him by the defendant. He said it was on his desk. He did not know who put it on his desk, and that the defendant said to him, ‘Pick up that baggage’, that [62] was all. Now, let us say that the defendant had the possession of the check. That, of itself, is not sufficient. There must be knowledge, and it must be established that the defendant had knowledge that the check represented baggage containing opium, and that that opium had been imported into the United States contrary to law.

“The Court: I think that there is sufficient evidence to go to the jury, and under the circumstances of the case I will deny the motion. Bring the jury in.”

LEE KING, A WITNESS ON BEHALF OF
THE DEFENDANT

Lee King, called as a witness on behalf of the defendant, being first duly sworn, testified substantially as follows:

My name is Lee King and I reside at 717 Grant Avenue and was living there on the 9th of December of 1942. I have lived there ever since that firm was established. I am a Chinese bookkeeper and cashier for the Hing Wah Tai Company. I am also an accountant and one of the owners of the company. I have occupied a room at 717 Grant Avenue. I know the defendant Chan Chaun. I was present on the 8th day of December, 1942, in the store with Chan Chaun while he was talking to a man by the name of Wong. This man asked for the price of merchandise and I told him. He was talking to one of the customers who had a piece of baggage that he wanted brought in and Chan said, "That is all right, you just leave that here and we will take care of it". I did not see him put the tag down but I saw him [63] walk out. I do not know the man and had not seen him before that day.

Cross Examination

I have not seen this man since. I have worked for the Hing Wah Tai Company from the time he first started; I am also one of the partners. I have been there for about five and a half years. Chan Chaun is also a partner.

(Testimony of Lee King.)

Redirect Examination

Occasionally when a customer comes in and asks us to pick up baggage we do it as an accommodation. I take my meals at 717 Grant Avenue and other people do. I have a room there and so has Chan Chaun and other people there. Chan Chaun and myself, the cook and the porter live there. I also have access to the kitchen. Besides the people living at 717 Grant Avenue, other people working there go in and out of the kitchen. There is a store-room there and some of our customers go upstairs to select goods. We keep merchandise on that floor. We get our meals on the mezzanine floor. There is a table there.

Recross Examination

The firm of Hing Wah Tai is engaged in the importing and exporting of Chinese goods. On other occasions we have picked up baggage for customers. We have a truck of our own. The man that I testified concerning I never saw before or since, nor have I seen him back in the store since that time.

[64]

PON YIN JEUNG CALLED AS A WITNESS
FOR THE DEFENDANT

Pon Yin Jeung, previously sworn, was called as a witness for the defendant and testified substantially as follows:

I have been a cook at 717 Grant Avenue since the firm was established. I live there. I prepare the food for those employed there. The people employed there go into the kitchen.

Cross Examination

Four people live at 717 Grant Avenue. Myself, Chan Chaun, Lee King and Mah Hoy.

TESTIMONY OF PON WEI CALLED AS A
WITNESS FOR THE DEFENDANT

Pon Wei, having been previously sworn, was called as a witness for the defendant and testified substantially as follows:

I do not live at 717 Grant Avenue. I am by occupation a receiving and shipping clerk. I take my meals at 717 Grant Avenue. Other people also eat there. I have occasion to go into the kitchen located on the fourth floor all of the time.

TESTIMONY OF CHAN CHAUN
THE DEFENDANT

Chan Chaun, the defendant, called in his own behalf having been first duly sworn, and examined through interpreter Park, testified substantially as follows:

My name is Chan Chaun and I am the defendant in this case. I am 55 years of age and I am married and I am the father of two sons and one daughter. I have a son and wife in China and a son and daughter here. I am a member of the firm of Hing [65] Wah Tai and have been a member of that firm for over four years. I live at 717 Grant Avenue. I went to Vancouver and visited there. On my way to Vancouver I stopped at Portland. I think it was on November 30th—no October 30th.

“Mr. Duane: When were you in Portland?

A. I thing November 30.

Q. What? A. November 30.

Q. You were in Portland November 30?

A. October 30.”

I left San Francisco October 29th and my first stop was in Portland. I left San Francisco the night before and the next day landed at Portland where I stayed one day. While there I visited some of my customers. I then went to Seattle where I stayed three or four days and again visited my trade and customers. While there in Seattle I visited the Chinese Consul, because I wanted to take a train over to Vancouver and I wanted to get a special

(Testimony of Chan Chaun.)

permit from the Consul to go over by train instead of on the boat. I visited the Chinese Consul at Seattle on November 2nd. The letter that you show me dated November 2, 1942 is the one I took with me when I went to Vancouver. I got this letter from the Consulate.

Whereupon the letter was marked "Defendant's Exhibit A For Identification."

I went to Vancouver on either the 3rd or 4th of November. I went there for the purpose of buying goods and I bought over \$6,000 worth of goods. I dealt with a customs broker there but I do not remember his name. I have his card here. This card was given to me on coming back to this city to see Mr. Hooper. Mr. Hooper is also a customs broker located across from the Postoffice in San Francisco. The papers which you show me entitled "Consumption entry, United States Customs [66] Service" are ones that Mr. Robinson sent up to me. Mr. Robinson is connected with the Hooper firm, customs brokers.

Whereupon the document was marked "Defendant's Exhibit B For Identification."

On November 20th I was in Seattle taking a train back to San Francisco. I was not in Portland on November 30th of 1942. Government's Exhibit No. 7, which you show me, is not my bag. I did not check this bag in Portland, nor have I ever seen this bag before. On December 9, 1942, I saw a grip that Major Manning brought up. I do not know whether this is the one or not, it looks like it.

(Testimony of Chan Chaun.)

Government's Exhibit 8, which you show me, I have seen before. That check was brought in by a customer by the name of Wong Jock Mong and he asked me as an accommodation to have it picked up. He came into the store and asked me for the price of some goods and then he said, "I have a check here, will you have it brought up for me?" I told him I would and told him to leave the check on the desk or table, which he did. I later told Pon Wei to have the baggage picked up. Wong did not tell me what the suitcase contained. He just said there was a piece of baggage that he wanted picked up. I did not see Wong before this time. The night before I met him at the Bing Hong Tong and he said he had come in from Portland to buy goods and would come down to my store. He told me where he was living and what goods he was going to buy. The Bing Hong is the Tong to which I belong and Wong is also a member of the Tong. I [67] told Inspector Manion and Major Manning that I had met this man Wong at the Tong the day before.

Government's Exhibits 1, 2 and 3, which you show me, are not my property, nor did I ever have those jars in my possession, nor did I ever see them, nor did I ever put them in the kitchen at 717 Grant Avenue. Government's Exhibits 4 and 5, which you show me, I have never seen before. I did not have yen shee at 717 Grant Avenue. I never saw it before. Government's Exhibit No. 10, which you show me, consisting of parts of pipes and a scale did not belong to me.

(Testimony of Chan Chaun.)

Government's Exhibit No. 6, which you show me, is a carton containing 12 brass cans, is not my property, nor have I ever seen it before, nor did I check anything like it at Portland at any time.

Cross Examination

I did not know this man Wong Jock Mong until I met him the first time and I have never seen him again.

I have been in San Quentin. I was convicted of smoking opium.

Whereupon Defendant's Exhibit A For Identification was offered and received in evidence as defendant's exhibit.

Said Defendant's Exhibit A, in evidence, on the letterhead of the Consulate of the Republic of China, Seattle, Washington, November 2, 1942, reads as follows:

"To Whom It May Concern:

This is to certify that the bearer, Mr. Chan [68] Chaun, General Manager of Hing Wah Tai & Company, 717 Grant Avenue, San Francisco, California, is going to Vancouver on business for a few days."

(Signed) HSIAO-WAN TAO,
Vice Consul."

Whereupon the defendant rested his case.

Whereupon it was stipulated by and between counsel for the United States and counsel for the defendant that the records of the Superior Court of the State of California, in and for the City and County of San Francisco, would show that the defendant had been convicted of the possession of smoking opium in violation of the State Poison Act.

Whereupon the cause was argued to the jury by counsel for the Government and for the defendant.

Thereafter, the arguments having been concluded, the Court instructed the jury.

Thereafter, the instructions to the jury having been concluded, the case was submitted to the jury and thereafter the jury returned into court and rendered a verdict finding the defendant guilty on counts Three and Four of Indictment No. 27868-G and guilty on Indictment No. 8362 (Sac.).

Thereafter counsel for the defendant moved the Court for a new trial, which said motion for a new trial was as follows:

“Now Comes the defendant Chan Chaun in the above entitled action, and moves this Honorable Court for an order [69] vacating the verdict of the jury convicting said defendant, and granting said defendant a new trial on each and every count of the indictment herein, for the following and each of the following causes, materially affecting the constitutional rights of said defendant:

“1. That the verdict is contrary to the evidence adduced at the trial herein;

“2. That the verdict is not supported by the evidence in the cause;

“3. That the evidence adduced at the trial is insufficient to justify said verdict;

“4. That said verdict is contrary to law;

“5. That the trial court erred in admitting evidence in the course of the trial which was incompetent, irrelevant and immaterial, which errors were duly and regularly excepted to by said defendant;

“6. That the trial court erred in refusing to give certain instructions proposed by said defendant, and to which ruling of the court said defendant duly and regularly excepted;

“7. That the trial court erred in refusing to direct a verdict of ‘not guilty’ at the close of the evidence of the United States;

“8. That the trial court erred in admitting evidence in the course of the trial where no proper foundation had been laid;

“To all of which motions said defendant duly and regular- [70] ly excepted.

“This motion is made upon the minutes of the Court and upon all records and proceedings in said action, and upon all the testimony and evidence introduced at the trial.

Dated: August, 1943.

WALTER H. DUANE

Attorney for Defendant”

Said motion for a new trial was by the Court denied, to the denial of which the defendant duly excepted.

Thereafter counsel for the defendant moved the Court in arrest of judgment, which motion in arrest of judgment is as follows:

“[Title of Court and Cause.]

“Comes Now Chan Chaun, defendant in the above entitled action, against whom a verdict of guilty was rendered on the 7th day of August, 1943, in the above entitled cause, and moves the Court to arrest the judgment against said defendant and hold for naught the verdict of guilty rendered against said defendant on each and every count of said indictment.

“1. That the indictment and each and every count thereof in this cause, does not state facts sufficient to constitute a public offense under the laws of the United States;

“2. That said indictment and each and every count thereof is uncertain, unintelligible and ambiguous and insufficient in law to apprise said defendant of the nature of the charge or charges against him; [71]

“3. That the evidence is not sufficient to support the verdict as to any of the counts of said indictment;

“4. That the verdict on each and every count of said indictment is contrary to law.

“Wherefore, because of which said errors in the record herein, no lawful judgment may be rendered by the Court, and said defendant prays that this motion be sustained and the judgment of conviction against defendant

be arrested and held for naught, and that said defendant have all such other orders as may seem meet and just in the premises.

WALTER H. DUANE

Attorney for Defendant”.

Which said motion in arrest of judgment was by the Court denied, to the denial of which the defendant duly and regularly excepted.

The said motions for a new trial and in arrest of judgment having been denied, the Court proceeded to pass judgment upon the defendant, and, thereafter, and on August 7, 1943, the Court imposed judgment and sentence upon the defendant as follows: That in case No. 8362 the defendant serve a term of two years in a United States Penitentiary, to be designated by the Attorney General of the United States, and pay a fine of \$500.00.

That in case No. 27868-G on Count Three thereof, the defendant serve a term of one year and one day in a United States Penitentiary, to be designated by the Attorney General [72] of the United States and pay a fine in the sum of \$100.00; that on Count Four the defendant be confined in a United States Penitentiary, to be designated by the Attorney General of the United States, for a period of one year and one day and pay a fine of \$100.00; the judgments on Counts Three and Four of Indictment 27868-G to run concurrently; and the judgment imposed on said Counts Three and Four of Indictment 27868-G to run concurrently with the judgment imposed on Indictment No. 8362 (Sac.).

That the above Bill of Exceptions contains all of

the evidence, oral and documentary, and all of the proceedings relating to the trial, conviction, motion for a new trial, motion in arrest of judgment and judgment and sentence.

Dated: San Francisco, California, September 17th, 1943.

WALTER H. DUANE

JAMES B. O'CONNOR

Attorneys for Defendant
and Appellant [73]

[Title of District Court and Cause—No. 27868-G,
No. 8362 (Sac.).]

ASSIGNMENT OF ERRORS

Chan Chaun, the defendant in the above entitled action, and plaintiff on appeal herein, having appealed to the United States Circuit Court of Appeals in and for the Ninth Circuit, from the judgments and sentences entered in the above entitled cause against him, and said defendant having given notice of appeal, as provided by law, now makes and files the following Assignment of Errors herein, upon which he will rely for a reversal of the judgments and sentences upon appeal and which error and each of them are to the great detriment, injury and prejudice of said defendant and in violation of the rights conferred upon him by law, and the defendant says that in the recorded proceedings of the above entitled cause upon the hearing and determination thereof, in the Southern Division of the

United States District Court for the Northern District of California, there is manifest error in this, to-wit:

I.

That the court erred in denying the motion of the [74] defendant for a directed verdict of not guilty, made at the conclusion of the testimony on behalf of the United States, upon the ground that the evidence was insufficient as a matter of law to support a conviction of the defendant.

II.

That the court erred in denying the defendant's motion for a new trial.

III.

That the court erred in denying the defendant's motion in arrest of judgment.

IV.

That the court erred during the course of the trial in receiving in evidence Government's Exhibit 10, consisting of two opium pipes, two bowls and scales, to the offer and acceptance of which evidence the defendant objected upon the ground that such evidence was immaterial, irrelevant and incompetent and not within the issues of the case, and to the acceptance of which evidence defendant excepted.

Wherefore, because of the manifest errors committed by the court, the defendant prays that said judgments and convictions and sentences be reversed, and for such other and proper relief as to the court may seem meet and proper.

Dated: San Francisco, Calif. September 17th,
1943.

WALTER H. DUANE
JAMES B. O'CONNOR

Attorneys for Defendant
and Appellant [75]

[Title of District Court and Cause—No. 27868-G,
8362 (Sac.).]

STIPULATION RE: BILL OF EXCEPTIONS

It Is Hereby Stipulated by and between the attorneys for the United States and the attorneys for the defendant that the foregoing Bill of Exceptions on behalf of the above named defendant on appeal herein to the Circuit Court of Appeals in and for the Ninth Circuit is in proper form and conforms to the truth and that the same may be settled, allowed, signed and authenticated by this Court as the true Bill of Exceptions herein on behalf of said defendant and that it may be made part of the record in this case.

FRANK J. HENNESSY
United States Attorney

W. EHNKING
Assistant United States
Attorney

Attorneys for Plaintiff

WALTER H. DUANE
JAMES B. O'CONNOR

Attorneys for Defendant [76]

[Title of District Court and Cause—No. 27868-G,
8362 (Sac.).]

ORDER SETTLING, ALLOWING AND AU-
THENTICATING BILL OF EXCEPTIONS
AND MAKING THE SAME PART OF THE
RECORD.

The foregoing Bill of Exceptions duly presented by the defendant Chan Chaun and duly agreed to by the respective parties hereto, having been duly presented to the Court within the time allowed and required by law, as extended, and by the rules and orders of this Court, duly and regularly made in that behalf, is hereby settled, allowed, signed and authenticated as in proper form and in conformity with the truth and as the true Bill of Exceptions herein and is hereby made a part of the record in this case.

Dated: November 30, 1943.

LOUIS E. GOODMAN

United States District Judge.

[77]

Receipt of a copy of the within Bill of Exceptions of Defendant Chan Chaun and Assignment of Errors is hereby admitted this 17 day of September, 1943

FRANK J. HENNESSY,

United States Attorney
General

By.....

Assistant United States
Attorney

[Endorsed]: Lodged Sept. 17, 1943. Filed Nov. 30, 1943. [78]

[Title of District Court and Cause.]

PRAECIPE ON APPEAL

To the Clerk of the above entitled Court:

The appellant herein respectfully requests the inclusion of the following as part of the record on appeal herein:

1. The indictments in case No. 27868-G and case No. 8362 (Sac.).
2. Notice of appeal.
3. The assignment of errors.
4. Bill of exceptions.
5. Judgment and sentence.
6. Motion for a new trial.
7. Motion in arrest of judgment.
8. Order denying new trial.
9. Order denying motion in arrest of judgment.
10. Orders extending time re bill of exceptions.
11. Order settling, allowing and authenticating bill of exceptions.
12. Stipulations re bill of exceptions.
13. Plea of defendant.
14. Order consolidating causes for trial.
15. Verdict.

Dated: December 15, 1943.

WALTER H. DUANE

JAMES B. O'CONNOR

Attorneys for Appellant.

[Endorsed]: Filed Dec. 15, 1943. [79]

In the Northern Division of the United States
District Court for the Northern District of
California

(No. 8362—INDICTMENT)

In the October 1942 Term of said Division of said
District Court, the Grand Jurors thereof upon their
oaths present: That

CHAN CHAUN

whose full and true name is, other than hereinabove
stated, to said Grand Jurors unknown (hereinafter
called "said defendant"), heretofore, to-wit, on or
about the 1st day of December, 1942, at Davis Junction,
in the County of Yolo, within said Northern
Division of the Northern District of California, did
unlawfully, knowingly, fraudulently and feloniously
conceal and facilitate the concealment of a certain
derivative and preparation of Opium, to-wit,
Smoking Opium, in quantity particularly described
as approximately 80 ounces of Smoking Opium contained
in 12 five tael brass cans in a suitcase in and
on Bus No. 401 of the Pacific Greyhound Bus Company,
which said smoking opium had been imported
into the United States of America contrary to law,
as said defendant then and there well knew. (T. 21
USCA, 174)

FRANK J. HENNESSY

United States Attorney

By EMMET J. SEAWELL

Assistant U. S. Attorney

[Endorsed]: No. 8362. A true bill, John S. Boitano,
Foreman. Filed Mar. 22, 1943. Walter B. Maling,
Clerk. [80]

[Title of District Court.]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 14th day of April, in the year of our Lord one thousand nine hundred and forty-three.

Present: the Honorable Louis E. Goodman, District Judge.

[Title of Cause.]

ORDER CONSOLIDATING WITH CASE No.
27868-G, AND SETTING CONSOLIDATED
CASES FOR TRIAL

This case came on this day to be set for trial. James T. Davis, Assistant United States Attorney was present for and on behalf of the United States. The defendant Chan Chaun was present with Walter H. Duane, Esq., his attorney. On motion of Mr. Davis and by consent of Mr. Duane, it is Ordered that case No. 27868-G—United States of America vs. Chan Chaun, pending in the Southern Division of this Court be, and the same is hereby consolidated with this case for trial. After further hearing the attorneys, it is Ordered that this case and consolidated case No. 27868-G, be and the same are hereby set for May 27, 1943, for trial, at San Francisco, California. [81]

[Title of District Court.]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 27th day of May, in the year of our Lord one thousand nine hundred and forty-three.

Present: the Honorable Louis E. Goodman, District Judge.

[Title of Cause—No. 8362. Criminal.]

ORDER RE-SETTING CONSOLIDATED CASES

On motion of Walter H. Duane, Esq., attorney for defendant and by consent of James T. Davis, Esq., Assistant United States Attorney, it is Ordered that this case and case *and case* No. 27868-G—United States of America vs. Chan Chaun, pending in the Southern Division of this Court, heretofore consolidated with this case for trial, be and the same are hereby re-set for June 8, 1943, for trial. [82]

[Title of District Court and Cause—No. 8362.]

VERDICT

We, the Jury, find Chan Chaun, the defendant at the bar, Guilty.

W. F. SISSON

Foreman.

[Endorsed]: Filed August 5, 1943, at 4 o'clock and 25 minutes P.M. C. W. Calbreath, Clerk. By J. A. Schaertzer, Deputy Clerk. [83]

[Title of District Court and Cause—No. 8362.]

MOTION OF DEFENDANT IN ARREST
OF JUDGMENT

Comes now Chan Chaun, defendant in the above entitled action, against whom a verdict of guilty was rendered on the 5th day of August, 1943, in the above entitled cause, and moves the Court to arrest the judgment against said defendant and hold for naught the verdict of guilty rendered against said defendant on each and every count of said indictment.

1. That the indictment and each and every count thereof in this cause, does not state facts sufficient to constitute a public offense under the laws of the United States;

2. That said indictment and each and every count thereof is uncertain, unintelligible and ambiguous and insufficient in law to apprise said defendant of the nature of the charge or charges against him;

3. That the evidence is not sufficient to support the verdict as to any of the counts of said indictment;

4. That the verdict on each and every count of said indictment is contrary to law.

Wherefore, because of which said errors in the record herein, no lawful judgment may be rendered by the Court, and said defendant prays that this motion be sustained and the judgment of conviction against defendant be arrested and held for naught,

and that said defendant have all such other orders as may seem meet and just in the premises.

WALTER H. DUANE

Attorney for Defendant

[Endorsed]: Filed Aug. 7, 1943. [84]

[Title of District Court and Cause—No. 8362.]

MOTION FOR A NEW TRIAL

Now comes the defendant Chan Chaun in the above entitled action, and moves this Honorable Court for an order vacating the verdict of the jury convicting said defendant, and granting said defendant a new trial on each and every count of the indictment herein, for the following and each of the following causes, materially affecting the constitutional rights of said defendant:

1. That the verdict is contrary to the evidence adduced at the trial herein;

2. That the verdict is not supported by the evidence in the cause;

3. That the evidence adduced at the trial is insufficient to justify said verdict;

4. That said verdict is contrary to law;

5. That the trial court erred in admitting evidence in the course of the trial which was incompetent, irrelevant and immaterial, which errors were duly and regularly excepted to by said defendant;

6. That the trial court erred in refusing to give certain instructions proposed by said defendant, and to which ruling of the court said defendant duly and regularly excepted;

7. That the trial court erred in refusing to direct a verdict of "not guilty" at the close of the evidence of the United States;

8. That the trial court erred in admitting evidence in the course of the trial where no proper foundation had been laid;

To all of which motions said defendant duly and regularly excepted. [85]

This motion is made upon the minutes of the Court and upon all records and proceedings in said action, and upon all the testimony and evidence introduced at the trial.

Dated: August 7th, 1943.

WALTER H. DUANE

Attorney for Defendant

[Endorsed]: Filed Aug. 7, 1943. [86]

District Court of the United States
Northern District of California, Northern Division
No. 8362. Criminal Indictment in One count for
violation of U. S. C. A. Title 21, Sec. 174
(Possess and conceal narcotic drugs)

UNITED STATES

v.

CHAN CHAUN

JUDGMENT AND COMMITMENT

On this 7th day of August, 1943, came the United States Attorney, and the defendant, Chan Chaun, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to-wit: Viol. of Title 21, USCA, Sec. 174 (Possess and conceal narcotic drugs)—defendant, on December 1, 1942, at Davis Junction, California, did conceal and facilitate the concealment of a certain derivative and preparation of Opium, to-wit, Smoking Opium in quantity particularly described as 80 ounces of Smoking Opium contained in 12 five tael brass cans, which said smoking opium had been imported into the United States of America contrary to law, as said defendant then and there well knew; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and adjudged that the defendant, having been found guilty of said offense, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of two (2) years and pay a fine to the United States of America in the sum of Five Hundred and no/100 (\$500.00) Dollars; and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law. [87]

It is further ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

LOUIS E. GOODMAN

United States District Judge

The Court recommends commitment to a U. S. Penitentiary.

Entered and filed this 7th day of August, 1943.

C. W. CALBREATH,

Clerk,

By J. A. SCHAERTZER,

Deputy Clerk.

Examined by:

JAMES T. DAVIS,

Asst. U. S. Atty. [88]

[Title of District Court and Cause—No. 8362.]

NOTICE OF APPEAL

Name and Address of Appellant: Chan Chaun,
717 Grant Avenue, San Francisco, California.

Name and Address of Appellant's Attorney:
Walter H. Duane, Esq., 490 Mills Building, San
Francisco, California.

Offense: Violation of Jones-Miller Act, Title 21,
U. S. C. A., Section 174.

That the defendant on or about the first day of December, 1942, at Davis Junction in the County of Yolo, State of California, within said Division and District, did unlawfully, knowingly, fraudulently and feloniously conceal and facilitate the concealment of a certain derivative and preparation of Opium, to-wit, Smoking Opium, in quantity particularly described as approximately 80 ounces of Smoking Opium contained in 12 five tael brass cans

in a suitcase, which said Opium had been imported into the United States of America, contrary to law, as said defendant then and there well knew.

Date of Judgment: August 7, 1943.

Description of Judgment and Sentence: "Guilty" as charged in said Indictment; two (2) years imprisonment and \$500.00 fine.

Name of Prison Where Now Confined: County Jail of the City and County of San Francisco, under five (5) days stay of execution. [89]

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeal of the Ninth Circuit, from the judgment above mentioned, on the grounds set forth below.

GROUND OF APPEAL

1.

That the learned trial Judge committed errors in law arising during the course of the trial, and erred in the decision of questions of law arising during the course of the trial.

2.

That the evidence produced and received upon the trial of said cause was insufficient as a matter of law to justify the verdict of the jury.

3.

That the learned trial Judge erred in denying the motion made by counsel for defendant for a directed verdict of "Not Guilty" at the conclusion of the case of the prosecution, for the reason that

taking said evidence in said case is not sufficient as a matter of law to support a verdict of "Guilty".

4.

That the trial court erred in not instructing the jury to return a verdict of "Not Guilty" in favor of appellant.

Dated: August 9, 1943.

CHAN CHAUN

Appellant

WALTER H. DUANE

Attorney for Appellant

(Receipt of Service.)

[Endorsed]: Filed Aug. 10, 1943. [90]

[Title of District Court.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 90 pages, numbered from 1 to 90, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of The United States of America, vs. Chan Chaun, *vs. Chan Chaun*, and The United States of America, vs. Chan Chaun, No. 8362, Consolidated Cases, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$11.30 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 13th day of January, A. D. 1944.

C. W. CALBREATH,
Clerk,
W. E. VAN BUREN,
Deputy Clerk.

[Seal]

[Endorsed]: No. 10,525. United States Circuit Court of Appeals for the Ninth Circuit. Chan Chaun, Appellant, vs. United States of America, Appellee. Transcript of Record Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

Filed January 20, 1944.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

